

ENTERED

June 29, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

SAMUEL MITCHELL,

Plaintiff,

VS.

LORIE DAVIS-DIRECTOR TDCJ-CID,
et al,

Defendants.

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CIVIL ACTION NO. 3:17-CV-0122

MEMORANDUM OPINION AND ORDER

Plaintiff Samuel Mitchell, presently incarcerated in the Texas Department of Criminal Justice–Correctional Institutions Division (“TDCJ”) at the Powledge Unit, filed a complaint under 42 U.S.C. § 1983, alleging violations of his civil rights. On June 7, 2018, the Court granted Mitchell leave to proceed *in forma pauperis* and assessed an initial partial filing fee of \$23.00 (Dkt. 15). The plaintiff now has filed a letter in response to the Court’s fee order, stating that he objects to withdrawals from his account and is “no longer prosecuting this civil action” (Dkt. 16).

Mitchell has clearly communicated his desire not to pursue his case. Federal Rule of Civil Procedure 41(a) permits dismissal of an action at the plaintiff’s request. A motion under Rule 41(a) for voluntary dismissal “should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit.” *Test Masters Educ. Servs., Inc. v. Robin Singh Educ. Servs., Inc.*, 799 F.3d 437, 448 (5th Cir. 2015) (internal citation and quotation marks omitted). In this case, Defendants have not been served with process and will not be prejudiced.

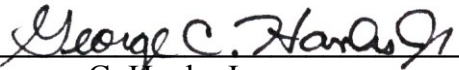
The Court therefore **ORDERS** as follows:

1. This civil action is **DISMISSED** without prejudice pursuant to Federal Rule of Civil Procedure 41(a).

2. The fee collection order entered in this case (Dkt. 15) is **VACATED**. Inmate Trust Fund officials shall make no further withdrawals from the prison trust fund account of the plaintiff, Samuel Mitchell (TDCJ # 02043205), to collect filing fees for Civil Action No. 3:17-0122. The plaintiff is advised, however, that funds properly withdrawn under the collection order to date will not be refunded.

The Clerk will provide a copy of this order to (1) the plaintiff and (2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, fax 936-437-4793.

SIGNED at Galveston, Texas, this 29th day of June, 2018.



George C. Hanks Jr.
United States District Judge